D.B. CIVIL MISC. APPLICATION NO.7/2006
(Sangmarmar Vikas Samiti V/s Union of India and ors.)

1.3.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P.VYAS

Mr.M.Mridul, Sr. Advocate with
Mr. R.N. Upadhyaya, for the applicant.
Mr. M.S. Singhvi, }
Mr. Ravi Bhansali } for the Railways.
Mr. N.M. Lodha, A.A.G.

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The matter comes up for orders on the application dtd.1.7.2005 made on behalf of Sangmarmar Khan Vikas Samiti, petitioner in D.B. Civil Writ Petition No.530/1997. This application has been separately registered under the directions dtd.16.1.2006 passed in the main petition.

The application relates to demand raised by the Dy. Chief Engineer in North-western Railway, Jodhpur, successor of Northern Railway in relation to shifting of track in question between Makrana to Parbatsar via Bidiyad which is subject matter of proceedings.

By letter dtd.24.1.2005, the applicant Sangmarmar Khan Vikas Samiti has been asked to deposit a sum of

Rs.4,39,69,712/- as balance of estimated cost of construction of re-alignment between Makrana to Bidiyad Section. The demand was raised after adjusting the amount of Rs.3,93,35,327/- deposited by Samiti and taking into account the maturity value of that deposit in terms of directions of the Court for keeping this amount in fixed deposit or to pay interest on such deposit. The total adjustment has been made in estimated cost to the tune of Rs.4,39,69,712/-.

The objection raised to the demand on behalf of the Samiti through this application is that there has been change in re-alignment Scheme originally proposed. The objection has also been raised about the standard and quality of the work required to be done under IRS Track Manual and qualitative requirement stated in the estimate and also the charges which according to the applicant was not to be borne by it as if the work has been carried on under the concept of deposit work.

The ground about delay in taking up shifting work for which the applicant – Samiti is not responsible has also been raised so as to claim that it is not liable to pay escalation in cost due to passage of time during which the

work could not be carried out.

The respondents have largely relied on the order passed by this Court on 5.3.1999 under which Samiti was to meet full cost as per actuals without any frills. Therefore, it is contended that the applicant having undertaken to meet the full cost as per actual, undertaking having been given unconditionally to bear the full cost of shifting, cannot riggle out of this undertaking on this ground. It was contended that the delay in undertaking the work was also not wholly attributable to the Railways in as much as notwithstanding the process for gaining the land started long back, it has taken some time due to intermediary proceedings initiated by the occupants of the land in question when they resisted their eviction from the land, firstly at the instance of Railways; and thereafter when the notifications for acquisition were issued, acquisition proceedings were challenged and due to interim order passed by the Courts at one time or another, the land was not made available to the Railways for the reasons beyond its control.

It would be apposite at this juncture to notice the exact order passed by this Court on 5.3.1999 in D.B. Civil

Writ Petition No.530/1997 at the behest of Samiti itself.

The Court noticed the facts that the learned counsel for Sangmarmar Khan Vikas Samiti had filed an affidavit along with minutes of meeting held in between Chairman, Railway Board and Chief Secretary, Rajasthan, pursuant to the directions of this Court, correctness of which was admitted by the learned counsel for the Railways also. This Court after considering the objections raised by Sh. D.K. Parihar who appeared for the persons affected by Jodhpur – Phulera Main Railway line noticed that the agreement essentially and substantially is for other railway line which is to be shifted hence does not concern them. The Sangmarmar Khan Vikas Samti was only concerned with Makrana – Parbatsar Railway Line. With this background, the Court further noticed

> "A perusal of the agreement would show **that the mine owners through Rajasthan Government have to meet the full cost as per actuals of which** Rs.1 crores has to be deposited by 31.3.1999 with the Northern Railway after which the operation of mining rights can be commenced outside railway land after this payment is made. We direct the Sangmarmar Khan Vikas Samiti to deposit Rs.1 crores through a banker's cheque in the name of Divisional Railway Manager, Northern Railway, Jodhpur by 31.3.1999. If the deposit is not accepted, same may be made in this

Court through its Registrar General.

> The Sangmarmar Khan Vikas Samiti also undertakes to make the balance payment as per the agreement. However, Rajasthan State through which payment has to be made to the Railways shall see to it that amount is recovered from the Sangmarmar Khan Vikas Samiti or mine owners who are benefited out of this agreement, if necessary, by resorting coercive process.
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> The Office bearers of Sangmarmar Khan Vikas Samiti shall submit an undertaking to this Court within a period of one month for the due compliance and performance of their part of the agreement. This undertaking shall be binding on other members of the Samiti also."

Apparently, the directions contained in the order dtd.5.3.1999 are unequivocal in the term that actual cost of shifting of railway line between Makrana – Parbatsar was to be borne by the mine owners represented through Sangmarmar Khan Vikas Samiti unconditionally and amount was to be recovered from them, if it is not paid an undertaking to that effect was to be given by the office bearers of Sangmarmar Khan Vikas Samiti. Obviously the cost estimated at that time was only provisional. The liability of mine owners was not conditional with nature of construction or the design of construction that is ultimately undertaken.

Apparently, the present application is to deviate and resile from unconditional undertaking given in pursuance of that direction in order to confer mine owner's liability upto cost estimated at the time when order was passed.

We, therefore, are unable to sustain the objection raised by the Samiti relating to estimated amount conveyed to them and asking its members to deposit the remainder of estimated amount. We make it clear that Sangmarmar Khan Vikas Samiti is liable for actuals. On completion of work, if after adjustment any amount remains in balance, it has to be refunded to them and if actuals ultimately are more than the estimate that has been conveyed to them, the difference may be recovered from the mine owners.

Accordingly, the application is dismissed. No order as to costs.

(R.P.VYAS)J (RAJESH BALIA)J.

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